



Ontario
Energy
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de l'énergie
de l'Ontario

DECISION AND ORDER ON THE CITY OF TORONTO MOTION

EB-2019-0007

Imperial Oil Limited

Leave to Construct Waterdown to Finch Project

BEFORE: **Emad Elsayed**
 Presiding Member

Robert Dodds
 Vice Chair and Member

Michael Janigan
 Member

November 14, 2019

1 INTRODUCTION

Imperial Oil Limited (Imperial Oil) applied to the Ontario Energy Board (OEB) under sections 90(1) of the *Ontario Energy Board Act, 1998 (Act)* for leave to construct approximately 63 kilometres of pipeline and associated infrastructure to transport refined oil products from its facility in the City of Hamilton to its facility in the City of Toronto (the Project). Imperial Oil also applied under section 97 of the Act for approval of the forms of easement agreement related to the construction of the proposed pipeline.

The interrogatory process was completed on August 6, 2019. The OEB granted a number of requests by the parties to extend the procedural schedule prior to the final submissions. On October 10, 2019, the City of Toronto (Toronto) filed a Notice of Motion (Motion) pursuant to Rule 27.03 of the OEB's Rules of Practice and Procedure requesting that the OEB order Imperial Oil to disclose certain information related to its safety audits, integrity management program and risk analysis.

The OEB has reviewed the submissions of Toronto, Imperial Oil, Canadian Manufacturers and Exporters, the City of Mississauga, the Region of Peel and Halton Region on the Motion. For the reasons provided in the Findings section, Toronto's Motion is dismissed.

2 PROCESS

The OEB issued a Notice of Hearing on April 11, 2019.

On May 31, 2019, the OEB issued Procedural Order No. 1 setting the schedule for a written hearing. Since the beginning of this proceeding the OEB, in response to requests by the City of Mississauga, Imperial Oil and Toronto, has extended the procedural schedule several times. The OEB's process, including the filing of the Notice of Motion by Toronto, is described below.

On June 7, 2019, the City of Mississauga asked the OEB, among other things, to extend the schedule set in the Procedural Order No. 1 by one month in order to have sufficient time to review the file and prepare interrogatories. On June 7, 2019 Imperial Oil in response to this extension request stated that it would support the request for a delay to the dates set in Procedural Order No.1 by up to one month. On June 11, 2019, the OEB issued Procedural Order No. 2 extending the procedural schedule for a written hearing.

On August 6, 2019 Imperial Oil filed responses to interrogatories and requested that certain information be treated as confidential.

On August 9, 2019 Toronto filed a request for a procedural schedule extension. Toronto noted that this request was supported by other municipal intervenors (Halton, Mississauga and Peel). Toronto stated that additional time was needed to review responses to interrogatories and stated that it "...hopes to use the additional time to seek agreements on various matters with Imperial...". By Procedural Order No. 3, issued on August 12, 2019, the OEB set the process for reviewing Imperial Oil's confidentiality request and cancelled previously set dates for final submissions.

On August 13, 2019, Imperial Oil objected to the one-month extension requested by Toronto, stating, however, that an extension of up to two weeks (10 business days) would be acceptable. On August 14, 2019, Toronto responded that it confirms its previous one month extension request. Regarding the request for additional information from Imperial Oil, Toronto noted in its August 14, 2019 correspondence that "Toronto has reiterated to Imperial its request for further information necessary to assess this Application, including particulars of the proposed permanent land interest acquisitions, and records sought in Toronto's interrogatories but not provided to date."

On August 20, 2019 the OEB, by way of Procedural Order No. 4, granted the confidentiality request to Imperial Oil, and extended the date for OEB staff and intervenors' final submissions by three weeks to September 6, 2019 and for Imperial Oil's reply submission to September 16, 2019.

In Procedural Order No. 4, the OEB also directed Imperial Oil to file on the record the information referenced in Toronto's letter of August 14, 2019 associated with its interrogatories, no later than August 23, 2019.

On August 23, 2019, Imperial Oil responded to the OEB's order to file information requested by Toronto. Imperial Oil indicated that Toronto requested information to assist its emergency preparedness and response and assurances related to insurance and indemnification. Imperial Oil stated that it would meet all the safety requirements of the Technical Standards Safety Authority (TSSA) and committed to working with Toronto directly to provide "sufficient information". Imperial Oil also asked that the OEB's proceeding continue in accordance with the schedule set in the Procedural Order No. 4. Imperial Oil proposed to update the OEB "on the information provided to the City of Toronto at the time of the written notice of commencement of construction".

On August 30, 2019, Imperial Oil requested an extension until September 20, 2019 for intervenors and OEB staff's written submissions and for Imperial Oil's reply to September 30, 2019. Imperial Oil noted that "This additional time will be used to work directly with the City of Toronto on various matters including the requested information. The City of Toronto is supportive for this request for an extension." On September 3, 2019, by way of a letter, the OEB granted this extension request.

On September 18, 2019, Imperial Oil filed a letter requesting a further extension of the intervenors and OEB staff's submissions to October 15, 2019 and Imperial Oil's reply to October 25, 2019. Imperial Oil said, as it did in the previous extension request, that "This additional time will be used to work directly with the City of Toronto on various matters including requested information. The City of Toronto is supportive of this extension". On September 19, 2019, the OEB, by way of a letter, granted this extension request.

On October 10, 2019, Toronto filed a Notice of Motion (Motion) pursuant to Rule 27.03 of the *Ontario Energy Board Rules of Practice and Procedure* requesting that the OEB order the disclosure of certain information related to Imperial Oil's safety and loss management audits, integrity management program, as well as its risk analysis for the existing and proposed pipelines.

The OEB issued Procedural Order No. 5 on October 11, 2019, setting the schedule for a written process for the Motion. The OEB cancelled all other procedural dates pending the outcome of the Motion. In accordance with the procedural schedule for the Motion proceeding, the OEB received the following filings:

- Written reply submission of Toronto on October 31, 2019
- Written reply of Imperial Oil on October 28, 2019

- Written submission by CME opposing the Motion on October 28, 2019
- Written submission by Halton Region supporting the Motion on October 21, 2019
- Written supplementary submission by Toronto in support of its Motion on October 17, 2019
- Written submission by the City of Mississauga supporting the Motion on October 17, 2019
- Written submission by the Region of Peel supporting the Motion on October 15, 2019¹

¹ On October 11, 2019 the OEB received an email from the Region of Peel stating its support of the motion.

3 THE MOTION

Notice of Motion

In its Motion, Toronto requested disclosure of the following information, noting that the request stems from Imperial Oil's non-responses or incomplete responses to Toronto's interrogatories:

1. The complete results of all audits, whether internal or external, conducted of Imperial Oil's Safety and Loss Management System program, including Imperial Oil's response to these audits
2. A copy of Imperial Oil's Integrity Management Program as required by CSA Z662-15 Clause 3.1.2 (f and v) and Clause 3.2, and complete details of all audits, whether internal or external, conducted of this Program including Imperial Oil's response
3. The complete risk analysis performed on the existing line, and on the proposed replacement line indicating where consequence levels may have changed between the existing and proposed pipelines

Toronto noted that the Motion is supported by the Region of Peel, the Halton Region and the City of Mississauga. Toronto stated that the disclosure of the information is needed for "the thorough, transparent and complete assessment of Imperial Oil's application...". Toronto noted that the disclosure was, in its view, mandated in Procedural Order No. 4. Toronto further specified that Imperial Oil had not provided full responses to its Information Request 25.3, which reads as follows:

25.3 Information Request

...

- c) The results of all audits, whether internal or external, conducted of the SLMS program, including Imperial Oil's response to these audits.
- d) A copy of the company's Integrity Management Program as required by CSA Z662-15 Clause 3.1.2 (f and v) and Clause 3.2, and details of all audits, whether internal or external, conducted of this Program including Imperial Oil's response.
- e) The results obtained from a detailed risk analysis performed on the proposed replacement line indicating where consequence levels may have changed between the existing and proposed pipelines.

Imperial Oil's responses to the above information request were as follows:

- c) OIMS assessments are conducted regularly at all Imperial Oil sites by internal assessors who are independent from the operation being assessed. Assessment results are proprietary. They are reviewed with senior management, tracked and stewarded to closure as part of Imperial Oil's stewardship process.
- d) Imperial Oil's integrity management program is focused on regular monitoring and inspection of pipelines with an aim to understand and manage the risks associated with pipeline operations consistent with CSA Z662 expectations. This program is not available for external review. A TSSA audit of the [Sarnia Products Pipeline (SPPL)] system was conducted in 2018/2019. While the audit report is still in the process of being finalized, no non-conformance issues were communicated to Imperial Oil by the TSSA.
- e) Risk analysis results are not shared publically; generally, the proposed pipeline will have a reduced probability and consequence levels as the pipeline will use advanced manufacturing and installation methods and will be installed deeper in sensitive areas. The proposed pipeline will be subject to continued execution of safe operations, robust monitoring and maintenance programs.

Toronto said that discussions with Imperial Oil had taken place and that Imperial Oil had received approvals from the OEB for several procedural extensions so that the discussions could continue. Toronto submitted that it had received correspondence from Imperial Oil on October 10, 2019, stating that it would not be disclosing the information requested by Toronto. This correspondence prompted Toronto to file the Motion. Toronto asked as part of the Motion that the date for intervenors' final submissions be extended by 14 days from the date disclosure is provided by Imperial Oil.

In its supplementary submissions on the Motion, Toronto reiterated that the Motion is supported by Halton Region, the City of Mississauga and the Region of Peel, which are municipal intervenors and major stakeholders.

Reply of Imperial Oil Limited

Imperial Oil is of the view that the information requested by Toronto is not relevant "...in [Toronto's] capacity as an intervenor on a leave to construct application" and that this information is "...properly before the Technical Standards and Safety Authority ("TSSA") to help determine if [the SPPL] meets safety and technical standards mandated under *Technical Standards and Safety Act, 2000* ("TSSA Act")".

Imperial Oil pointed to several procedural steps and events that are on the record of the proceeding to support its position. Imperial Oil noted that, consistent with the *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario*, 7th ed (2016) (OEB Environmental Guidelines), it

provided the Waterdown to Finch Environmental Report to the Ontario Pipeline Coordinating Committee (OPCC) for review. Imperial Oil noted that the TSSA is a member of the OPCC and a regulatory authority, and that the OEB relies on the TSSA's review when determining if a project meets technical and safety standards.

Imperial Oil submitted that the information sought by Toronto is of "...low probative value to the OEB..." and is not relevant given the TSSA's review.

Imperial Oil asked that the OEB dismiss the Motion, order intervenors and OEB staff final written submissions to be filed within five business days following the OEB's order on the Motion, and order Imperial Oil's reply submission within 15 business days following the date of intervenors and OEB staff submissions.

Imperial Oil submitted that it is prepared to file the following documents pursuant to confidentiality Rule 10 in Ontario Energy Board, [Rules of Practice and Procedure](#) :

- “(a) Imperial Oil's Safety and Loss Management System (SLMS) Framework which outlines how Imperial Oil meets the requirements of the SLMS through a robust application of the Operations Integrity Management System (OIMS) Framework. This document maps the required elements of CSA Z662 to the corresponding OIMS elements;
- (b) 2018 TSSA Audit Report of Imperial Oil's SPPL Integrity Management Program;
- (c) Imperial Oil's preliminary risk assessment for the Project; and
- (d) The results of Imperial Oil's final risk assessment for the Project, upon final submission to the TSSA (i.e., when available).”²

Imperial Oil highlighted the authorizations required by Ontario Regulation 210/01 under the TSSA Act, and noted that the TSSA has licensing powers and that Imperial Oil submitted the required Project related documentation to the TSSA. Imperial Oil further noted that it had received a letter from the TSSA on October 25, 2019 (TSSA Letter) which confirmed that the project has been selected for a full audit and that "...the TSSA will audit and inspect the SPPL to ensure compliance with applicable technical and safety standards for construction and operation”.

Imperial Oil argued that the information Toronto seeks is not relevant as the OEB relies on the technical expertise of the TSSA in its review of leave to construct applications. Imperial Oil stated that "...the OEB does not assume the role of other regulatory

² Imperial Oil Limited, Motion Reply Submissions of Imperial Oil Limited, October 28, 2019, page 2 of 15, paragraph 10

agencies, such as the TSSA, in assessing the merits of whether a given project meets complex technical licensing requirements”. In Imperial Oil’s view, the standard conditions of approval on leave to construct applications “...ensure that the requirements of other approvals, permits, licenses and certificates are fully addressed.” In Imperial Oil’s submission, because the OEB relies on the TSSA regarding safety and technical compliance, the information that Toronto seeks to ask Imperial Oil to disclose in the OEB proceeding is therefore not relevant to Toronto in its intervenor role before the OEB.

Toronto’s Reply to Imperial Oil’s Submission

Toronto responded to Imperial Oil’s submission by stating that the TSSA’s mandate is much narrower than the OEB’s public interest test, and that the TSSA’s review is “welcome but not relevant to this motion.”

Toronto considers Imperial Oil’s disclosure insufficient and high-level. Toronto maintained that the disclosure of the requested information is relevant to landowner and environmental matters and the public interest considerations of Imperial Oil’s application by the OEB.

Toronto also submitted that the risk assessment of the existing SPPL pipeline is relevant because the proposed replacement pipeline will be constructed following the existing SPPL route.

As well, Toronto submitted that Imperial Oil is responsible for the delays in the OEB’s process as it did not provide the information prior to October 10, 2019 when the Motion was filed.

4 FINDINGS

The Motion of the City of Toronto is dismissed.

The OEB has a broad public interest mandate in its consideration of applications under section 90 of the Act. This includes the consideration of a number of environmental issues. The general areas of environmental interest to the OEB are set out in the OEB Environmental Guidelines. Although this is not necessarily an exhaustive list of the environmental issues the OEB might consider in a given case, it provides a good overview of the types of issues that will generally be within scope. Imperial has filed all the materials required by the OEB Environmental Guidelines, and has responded to interrogatories on those materials.

The OEB recognizes that safety is of paramount importance for a proposed oil pipeline, particularly one that will pass through residential neighborhoods. However, many of the concerns raised by Toronto in its Motion appear to relate to matters that fall under the jurisdiction and expertise of the TSSA. It would not be in the public interest for the OEB to attempt to duplicate the efforts or review processes of the TSSA. Any approval of the OEB will be conditional on the Applicant obtaining all necessary approvals from both the TSSA, as well as a variety of other agencies.

In addition, the requests of Toronto are overly broad, and seek to enter into evidence a potentially large number of documents that are beyond what the OEB requires to assess whether the Project is in the public interest. Through its pre-filed evidence and responses to interrogatories, Imperial has provided significant information about the Project, and has offered to file additional documents in response to this Motion. With this, the OEB is satisfied that the record is sufficient for the parties to make their final arguments and for the OEB to make an informed decision in the public interest.

Although it has not agreed to file all of the materials requested in the Motion, Imperial has offered to file a number of additional documents on a confidential basis pursuant to the OEB's Rules of Practice and Procedure. These documents are:

- (a) Imperial Oil's SLMS Framework which outlines how Imperial Oil meets the requirements of the SLMS through a robust application of the OIMS Framework. This document maps the required elements of CSA Z662 to the corresponding OIMS elements
- (b) 2018 TSSA Audit Report of Imperial Oil's SPPL Integrity Management Program
- (c) Imperial Oil's preliminary risk assessment for the Project

- (d) The results of Imperial Oil's final risk assessment for the Project, upon final submission to the TSSA (i.e., when available)

Without commenting on the relevance of these materials in the current proceeding, the OEB understands that these materials could be helpful to Toronto and the other municipalities, and will allow Imperial to file them (with the exception of item (d) which is not available at this time) and for the parties to make submissions on the extent to which they should be treated as confidential. The materials will be treated as confidential on an interim basis pending the OEB's final determination, and parties wishing to see the documents may do so provided they execute the OEB's Declaration and Undertaking.

In accordance with the OEB's *Practice Direction on Confidential Filings*, Imperial Oil shall file with the OEB un-redacted versions of the proposed confidential information. Pursuant to section 5.1.4(a) of the *Practice Direction on Confidential Filings*, Imperial Oil is required to provide its reasons for the confidentiality request (as it pertains to the portions of the records for which it is requesting confidential treatment). This explanation should include reasons why the specific information (identified by section/page number) should be treated as confidential and the reasons why public disclosure of that specific information would be detrimental. As a result, the OEB directs Imperial Oil to file further detailed submissions in support of the confidentiality claims. Imperial Oil may also wish to re-examine the proposed confidential information and consider whether all of the information for which confidential treatment is requested is required and consider submitting a revised confidentiality request when filing its further submissions on this issue.

After receiving further explanation from Imperial Oil concerning the confidentiality claims, the OEB will be inviting submissions from any party who objects to Imperial Oil's request for confidentiality. The OEB will issue a decision on the confidential status of the proposed confidential information once it has considered any submissions.

5 ORDER

THE OEB ORDERS THAT:

1. Imperial Oil shall file with the OEB and deliver to all intervenors the following redacted information by **November 18, 2019**:
 - (a) Imperial Oil's Safety and Loss Management System (SLMS) Framework which outlines how Imperial Oil meets the requirements of the SLMS through a robust application of the Operations Integrity Management System (OIMS) Framework. This document maps the required elements of CSA Z662 to the corresponding OIMS elements
 - (b) 2018 TSSA Audit Report of Imperial Oil's Sarnia Products Pipeline (SPPL) Integrity Management Program
 - (c) Imperial Oil's preliminary risk assessment for the Project.
2. Imperial Oil shall file, by **November 18, 2019** a detailed explanation, including specific reasons, why the proposed information should be treated as confidential and why public disclosure of that information would be detrimental.
3. The OEB deems the information ordered to be filed by Imperial Oil as confidential on an interim basis.
4. Should counsel and/or consultants for intervenors require access to the proposed confidential information, the party shall make a written request to the OEB, copying Imperial Oil, and provide a signed copy of the OEB's [Declaration and Undertaking](#) by **November 21, 2019**. In the event that Imperial Oil objects to sharing the proposed confidential information with any party representative that has signed the Declaration and Undertaking, it must file its objections with the OEB and copy the relevant party by **November 25, 2019**. If the party to whom the objection is directed wishes to respond to the objection, it must file its reply by **November 27, 2019**.
5. OEB staff and intervenors may file written final submissions with the OEB and serve it on all Imperial Oil and intervenors by **December 10, 2019**. OEB staff and intervenors shall include in their submissions any objections to confidential treatment of the information specified in paragraph 1 of this order.
6. Imperial Oil may file its written reply submission with the OEB and serve it on all intervenors by **December 20, 2019**. Imperial Oil shall include its response to any objections to confidential treatment of the information specified in paragraph 1 of this order.

All materials filed with the OEB must quote the file number, **EB-2019-0007**, be made in a searchable/unrestricted PDF format and sent electronically through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and email address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <https://www.oeb.ca/industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have computer access are required to file seven paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Zora Crnojacki at Zora.Crnjacki@oeb.ca and OEB Counsel, Michael Millar at Michael.Millar@oeb.ca.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary

E-mail: boardsec@oeb.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, **November 14, 2019**

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Board Secretary and Registrar